IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 18198 of 2001 (O&M)
DATE OF DECISION: November 22, 2007

Mukhtiar Singh

…Petitioner

Versus

Pepsu Road Transport Corporation, Patiala and others

…Respondents

**CORAM: HON'BLE MR. JUSTICE M.M. KUMAR**

Present: None.

**JUDGMENT**

**M.M. KUMAR, J.**

The petitioner in the instant petition filed under Article 226 of the Constitution, has challenged orders dated 18.8.2000 (P-9) and 13.6.2001 (P-11) whereby recovery for a sum of Rs. 32,343/- has been ordered while processing his pension case and appeal of the petitioner against that order has been dismissed. Further it has been prayed that respondents may be directed to refund the aforementioned amount along with interest @ 18% per annum, which has been deducted from the gratuity and G.P. Fund of the petitioner as also to pay interest on the amount of pensionary benefits (Rs. 1,91,856/- + 1,27,047/- = Rs. 3,18,903/-), paid on 20.12.2000, which were payable on 31.1.2000. Still further it has been prayed that respondents be directed to grant to the petitioner two increments concerning

proficiency step up on completion of 8 and 18 years service on the post of Inspector and to consider him for promotion to the post of Station Supervisor w.e.f. 13.1.2000, when his junior Shri Mukand Singh was promoted as such and to pay arrear of pay with interest @ 18% p.a.. Re-fixation of pension after counting benefit of proficiency step up and promotion has also been sought.

Brief facts of the case are that the petitioner joined the Punjab Road Transport Corporation, Patiala, as Conductor and subsequently promoted to the post of Adda Conductor. On 24.12.1974 he was promoted as Inspector w.e.f. 4.9.1974. On 23.12.1978, the pay of the petitioner was fixed at par with one Shri Kuldip Singh. On 12.11.1992, he was further promoted as Chief Inspector. It is claimed that junior of the petitioner, namely, Shri Mukand Singh was promoted as Station Supervisor w.e.f. 13.1.2000 without considering the case of the petitioner. On the request made by the petitioner, he was retired from service w.e.f. 31.1.2000. After retirement of the petitioner a show cause notice was issued to him on 6.6.2000 mentioning that his pay was wrongly fixed at Rs. 7,220/- instead of Rs. 7,000/- w.e.f. 1.3.1999 and, thus, Rs. 32,343/- were paid in excess (P-6). Therefore, it was proposed to effect recovery of aforementioned amount. On 7.6.2000, the petitioner submitted reply to the show cause notice pointing out that as per the ratio of judgment of Hon'ble the Supreme Court in the case of **Sahib Ram v. State of Haryana, SCT 1995(1) 668**, no recovery could be effected from him. After affording personal hearing to the petitioner on 29.6.2000,

impugned order of recovery dated 18.8.2000 was passed. Thereafter appeal filed by the petitioner was also dismissed vide order dated 13.6.2001, which are subject matter of challenge in the instant petition.

In the written statement filed on behalf of the respondents it has been denied that the petitioner is entitled to promotion as Station Supervisor w.e.f. 13.1.2000, when Shri Mukand Singh was promoted as such. It has been pointed out that Shri Mukan Singh was not his junior because he had joined service on 29.6.1963 whereas the petitioner was appointed on 11.8.1963. It has also been denied that the petitioner was promoted as Inspector w.e.f. 4.9.1974 vide order dated 24.12.1974 (P-1) clarifying that the promotion was prospective and not retrospective. With regard to grant of two increments for proficiency step up on completion of 8 and 18 years of service on the post of Inspector it has been asserted that benefit of proficiency step up on completion of 8 years service has already been granted to him vide order No. 439, dated 26.7.1990. It has still further been asserted that the petitioner has not completed 18 years of service on the post of Inspector, inasmuch as, he has worked on the said post from 24.12.1974/30.12.1974 to 12.11.1992, thus, benefit of proficiency step up on completion of 18 years service is not admissible to him. With regard to issue of recovery of Rs. 32,343/-, the stand taken in the impugned order dated 18.8.2000 has been reiterated stating that since the petitioner was paid in excess than his actual entitlement, therefore, recovery has rightly been effected.

Controverting the averments of the written statement, replication has been filed by the petitioner. It has been pointed out that the petitioner joined service on 11.8.1963 and the date of joining of Shri Mukand as Conductor is 29.8.1963. In support of said averment appointment order of Mukand Singh, dated 14.9.1963, has been placed on record as Annexure P-13. With regard to retrospective promotion as Inspector w.e.f. 4.9.1974, the stand taken in the writ petition has been reiterated and it has been pointed out that the same is evident from Endorsement No. 1 of order dated 24.12.1974. It has been pleaded that vide order dated 4.9.1974 a number of persons were promoted. The petitioner represented that he may also be promoted as Inspector and consequently order dated 24.12.1974 was passed. In the endorsement it has been mentioned that he will stand at Serial No. 31 and Shri Hari Ram at Serial No. 36 in the promotion order No. 668/PRTC/Admn., dated 4.9.1974. However, the stand of the respondents qua benefit of proficiency step up has not been controverted in the replication.

During the pendency of the writ petition, Civil Misc. No. 1474 of 2006 was filed for placing on record orders passed by various Division Benches of this Court in the cases of **Hardeep Singh v. PRTC (CWP No. 10192 of 201, decided on 22.9.2003); Hari Ram v. M.D. PRTC (CWP No. 11880 of 2002, decided on 3.5.2004); Mukand Singh v. M.D. PRTC, Patiala (CWP No. 12667 of 2003, decided on 13.5.2004),** Single Bench judgment of this Court in the case of **Madan Lal v. State of Punjab and others (CWP No. 15499**

**of 2000, decided on 29.8.2005)** as well as judgment passed by Letters Patnt Bench in the case of **PRTC v. Madan Lal (LPA No. 190 of 2005, decided on 12.12.2005)** with a prayer to dispose of the instant petition claiming that the controversy involved in the instant petition is squarely covered by the aforesaid orders. On 23.2.2006, notice of the application was issued and on 24.4.2006, Mr. Harsh Aggarwal, while appearing for the respondents sought time to file reply to the aforementioned application. However, no reply was filed. On 16.5.2006, C.M. No. 1474 of 2006 was ordered to be taken up with the main case. Another Civil Misc. No. 12429 of 2007 has been filed on behalf of the petitioner to place on record judgment of Hon'ble the Supreme Court in the case of **Sahib Ram** (supra) as well as a Division Bench judgment of this Court in the case of **Resham Singh v. PRTC and others (CWP No. 20560 of 2006, decided on 10.5.2007)** (where I am the member of the Bench). Again it has been prayed that instant petition may be disposed of in terms of the aforesaid judgments. Notice of the aforementioned application was issued on 8.8.2007 and the same was ordered to be taken up alongwith the main case.

After perusing the record I am of the considered view that the issue involving recovery of Rs. 32,343/- from the petitioner is not *res integra*. It is trite to observe that no recovery can be fastened on a person when there is no element of fraud or misrepresentation on the part of such an employee. Reliance in this regard may be placed on the judgment of Hon'ble the Supreme Court in case of **Sahib**

**Ram** (supra), wherein it has been categorically held that no recovery could be effected from an employee in the absence of misrepresentation or fraud on his part.

In view of the above, impugned orders dated 18.8.2000 and 13.6.2001 (P-9 & P-11) are quashed. The amount shall be released to the petitioner within one month from the date of receipt of certified copy of this order.

In so far as the issue of promotion of petitioner to the post of Station Supervisor w.e.f. 13.1.2000, when Shri Mukand Singh was promoted as such, is concerned, without going into the merits of the case in that regard, the petitioner is directed to make representation to the respondents, which shall be decided within two months after its receipt by passing a speaking order. In view of the fact that respondents have taken a specific stand that the petitioner is not entitled to the benefit of increments as proficiency step up on completion of 8 and 18 years of service, as elaborated in the preceding paras, which has not been controverted by the petitioner in the replication, the prayer of the petitioner on that count is declined.

Writ petition stands disposed of in the above terms.

**(M.M. KUMAR)**
**JUDGE**

**November 22, 2007**
Pkapoor